

D/F

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SIK GAEK, INC.,	:	10-CV-4077 (ARR) (VVP)
	:	
Plaintiff,	:	<u>NOT FOR PRINT OR</u>
	:	<u>ELECTRONIC</u>
-against-	:	<u>PUBLICATION</u>
	:	
YOGI'S II, INC., and DANIEL KIM,	:	<u>OPINION &amp; ORDER</u>
	:	
Defendants.	:	
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ROSS, United States District Judge:

Plaintiff Sik Gaek, Inc., brings this action pursuant to the Lanham Act, 15 U.S.C. § 1125, and common law, alleging that defendants Yogi's II, Inc., and Daniel Kim misappropriated its graphic trademark "Sik Gaek." The Clerk of Court noted the default of both defendants, and plaintiff moved for a default judgment against them. Daniel Kim subsequently appeared in this action and moved to set aside his default. I referred both motions to the Honorable Viktor V. Pohorelsky, United States Magistrate Judge, for a report and recommendation.

On March 8, 2011, Judge Pohorelsky electronically filed and served his report and recommendation on the instant motions (the "R&R"). Judge Pohorelsky recommended that Daniel Kim's motion to set aside his default be granted because his default was not willful, his fifteen-day delay in responding to the complaint was not prejudicial to plaintiff, and he presented two meritorious defenses: that he had no ownership interest in Yogi's II and that plaintiff lacks standing. R&R at 4-5. Judge Pohorelsky recommended that plaintiff's motion for default judgment be denied, therefore, as to Daniel Kim and also as to Yogi's II in light of "serious questions as to the validity of service on Yogi's II." Id. at 3.

On March 25, 2011, plaintiff filed an objection to Judge Pohorelsky's R&R. "Within

fourteen days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b)(2); accord 28 U.S.C. § 636(b)(1). The court may adopt those portions of the report to which no timely objection has been made, as long as there is no clear error on the face of the record. Wilds v. United Parcel Serv., Inc., 262 F. Supp.2 d 163, 169 (S.D.N.Y. 2003). A district court must review de novo “those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1).

Plaintiff’s objection is untimely. Nonetheless, I have considered it and conducted a de novo review of the record. Having do so, I adhere to Judge Pohorelsky’s reasoning and recommendations. Therefore, plaintiff’s motion for a default judgment is denied, and Daniel Kim’s motion to set aside the default as to him is granted.

SO ORDERED.

s/Allyne R. Ross

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Allyne R. Ross  
United States District Judge

Dated: April 11, 2011  
Brooklyn, New York